

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

ANDREW PIERCE, III

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§

v.

Case No. 2:09-cv-0233-RSP

SUPERIOR ENERGY  
SERVICES, LLC, ET AL.

**MEMORANDUM ORDER**

Before the Court is the Amended Motion for Leave to Designate Responsible Third Party, filed by defendants Superior Energy Services and Devon Energy Production on November 16, 2011 (Dkt. No. 81). Plaintiff opposed the motion on the ground that defendants improperly rely upon Texas law rather than Rule 14 of the Federal Rules of Civil Procedure. Defendants have clarified that they are not seeking to join Warrior Energy Services Corp. as a third-party defendant, but rather to designate that they intend to assert to the jury that Warrior was at fault in the accident and should be apportioned its share of responsibility on the verdict form.

Under the federal procedural rules, defendant would ordinarily have accomplished its goal by alleging the negligence of Warrior in its answer as a defense. However, its motion accomplishes the same purpose and will be granted. Plaintiff's real objection is that Warrior, as plaintiff's employer, is immune from liability in this matter, but that does not, as a matter of the substantive law applicable in this diversity case, prevent the jury from assessing fault to Warrior if supported by the evidence. *E.g., In re Unitec Elevator Services Co.*, 178 S.W.3d 53, 58 n.5 (Tex. App.-Houston [1<sup>st</sup> Dist.] 2005, no pet.).

Accordingly, the motion (Dkt. No. 81) is GRANTED and the hearing set for June 18, 2012 is CANCELLED.

**SIGNED this 13th day of June, 2012.**

  
ROY S. PAYNE  
UNITED STATES MAGISTRATE JUDGE